Single Bench

(1)

COURT FEE INDIA CANCELLED TEN RUPEES

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

(3)

WRIT PETITION NO. 801 OF 2005

PETITIONERS:

1. Bhola Prasad S/O Nand Kishore Prasad, aged about 35 Years.
2. Satish Kumar S/o Nand Kishore, Aged about 30 years.
3. Suresh S/o Ramnandan Chourasiya, Aged about 50 years,

All resident of Nagar Ramanujganj, Thana Ramanujganj, Tashil Pal, District Surguja (CG).

P.R. No. 9/9/05
Presented by Shri Arjun Shukla
dated 03/03/05

-VERSUS-

RESPONDENTS:

1. Subhash S/o Late Ramnandan Ram, Chaurasiya, by cast Paneri, aged about 45 years,

2. Smt. Vimla W/o Subhash Chaurasiya aged about 40 years,

Both R/o Nagar Ramanujganj, Thana Ramanujganj, Tahsil Pal, Dist. Surguja (C.G.)

3.3.05

3A. Sushil S/o Krishna Prasad aged about 34 years.

3B. Babalu S/o Krishna Prasad, aged about 22 years.

3C. Meera Kumari D/o Krishna Prasad, aged about 30 years.

3D. Neelu Kumari D/o Krishna Prasad, aged about 20 years, all R/o Indrapuri, Road No. 1 Ranchi (Jharkhand).

4. Sudhir S/o Kashi Agrawal aged about 35 years, Occupation Business.

5. Manoj S/o Kashi Agrawal aged about 35 years, Occupation Business R/o Nagar Ramanujganj Tahsil Pal, Dist. Surguja (C.G.).

6. Smt. Kekni W/o Mani Prasad aged about 60years, Resident of Bavodar, Dist.Giridih (Jharkhand)

7. Smt. Krishna W/o Bihari Prasad, aged about 58years, Resident of Bavodar, Dist.Giridih (Jharkhand)

8. Smt. Sumitra W/o Narayan Prasad, aged about 55 years, Resident of Khoje kala, Patna City, Patna (Bihar)

9. Smt. Madhu Debi W/o Murli Prasad, aged about 40 years, Resident of Barwadih, Dist. PalamuJharkhand)

10. Smt. Anju W/o Lalit Prasad, aged about 32 years, Resident of Dehari On-sone, Dist. Rohtas (Bihar)

पथ आयुक्त
बिलासपुर (छ.ग.)
बिलासपुर तहसील के

11. Smt. Manju W/o Ajay Prasad, aged about 32 years, Resident of Rehla Dist Palamau (Jharkhand)

12. State of Chhattisgarh through Collector Surguja Ambikapur (CG).

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITATION CERTIORARI ETC OR ANY OTHER DIRECTION OF ORDER TO DO JUSTICE IN THE MATTER.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(6.8.)

आदेश पत्रक

मामला क्रमांक ..... WPMC 802/05 8-04-05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.3.2005

Shri Arun Shukla, counsel for the petitioners.

When the matter is called out, none present on behalf of the Caveator.

By this writ petition the petitioners have questioned the legality, propriety and correctness of the order dated 11.2.2005 (Annexure P-1) passed by learned Additional District Judge, Link Court, Ramanujganj whereby learned Additional District Judge allowed the miscellaneous appeal preferred by respondents No.1 to 5 herein and set aside the order dated 26.9.2002 passed by learned Civil Judge Class-I, Ramanujganj granting temporary injunction in favour of the petitioners herein and restraining respondents No.1 to 5 herein from transfer of property mentioned in Schedule A.

Brief facts leading to filing of this petition are that the petitioners herein filed a civil suit in the court of Civil Judge Class-I, Ramanujganj for declaration and injunction in respect of the property mentioned in Schedule-A along with plaint on the ground that the said property was purchased by their ancestor namely Ramanandan Chourasia in the name of his wife Dhaneshwari, that was a joint property of the parties and therefore, Dhaneshwari was not entitled to execute Will in favour of respondent No.1 to 3 herein.

Written statement was filed on behalf of the respondents herein mentioning therein that the property in question was purchased by Dhaneshwari Bai by her own income and that was not a joint Hindu family property. - Dhaneshwari Bai executed the Will on 10.11.1989 in favour of respondent No.1 to 3 and based on that the mutation

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(64)

आदेश पत्रक

मामला क्रमांक ..... 802/05 ..... **सन्** **200** 801/05

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

proceedings were started in which the petitioners herein were also noticed and ultimately that property was mutated in the names of respondent No.1 to 3, against which the petitioners moved an appeal and same was dismissed on 17.8.1998.

Learned Appellate Court reached to the conclusion that property in question was in the name of Dhaneshwari, she executed the Will in the year 1989 in favour of the respondent No.1 to 3, mutation proceedings was instituted in the year 1992 and on the basis of that Will property was mutated in the names of respondent No.1 to 3. No suit was filed by the petitioners for cancellation of the Will, therefore, petitioners failed to prove the prima-facie case and further balance of convenience lies in favour of the petitioners. Accordingly, the appellate court set aside the order passed by the Civil Judge.

I have heard learned counsel for the petitioners.

Having heard learned counsel for the petitioners, having perused the orders passed by trial court as well as appellate court and considering the reasoning mentioned by the appellate court, I am of the considered opinion that the appellate court has not committed any illegality, irregularity or not exceeded any jurisdiction by passing the impugned order, as the property in question was in the name of Dhaneshwari Bai, she was residing with respondent No.1 to 3 herein, she executed the Will in the year 1989 in favour of the said respondents, since then they are in possession of the same and that property has also been mutated in the names of respondents No.1 to 3 herein. Therefore, the appellate court rightly reached to the

XI-HC-22

(65)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक 802/05 **सन्** 200 801/05

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

conclusion that the petitioners herein failed to prove the prima –facie case or balance of convenience in their favour.

In the result, the order impugned does not suffer from any illegality and the petitioners have no case for interference by this Hon'ble Court under extra ordinary jurisdiction of Article 227 of the Constitution of India. However, looking to the allegations made by the petitioners in the plaint, it is ordered that if the respondents make any transfer of disputed property during the pendency of the suit that will be subject to the final decision of the suit.

With the aforesaid, the petition stands disposed of.

Consequently, M.W.P. No.648/05 & I.A. No.1620/2005 also stand disposed of.

Certified copy as per rules.

Sd/-
L.C.Bhadoo
Judge

Roshan

(पीछे देखिये)

13.9.05
13.9.05